

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0622P

Sales & Use Tax

Calendar Years 1996, 1997, & 1998

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ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the negligence penalty.

STATEMENT OF FACTS

The negligence penalty was assessed on a use tax assessment resulting from an audit conducted for the calendar years 1996, 1997, & 1998.

The taxpayer is a large general contractor operating mostly in Indiana and some in Kentucky. The taxpayer mainly constructs commercial and industrial buildings and structures for private businesses. There are a few government contracts. Subcontractors are used for interior and mechanical systems. Almost all work is performed at the customer's location. There is one business location in Indiana.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer argues the negligence penalty should be waived as the audit discrepancy was an unintentional oversight, and, the discrepancy was only 4% of the audited tax amount. The Department points out the audit was the third audit for the taxpayer and the audit issues are the same as the audit issues in the previous audits.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary

reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The Department finds the taxpayer was inattentive to tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer’s penalty protest is denied.